

**ASSEMBLY BILL**

**No. 1442**

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**Introduced by Assembly Member Gatto**

January 6, 2014

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An act to amend Sections 1798.3, 1798.14, 1798.17, 1798.18, 1798.19, and 1798.53 of the Civil Code, relating to the Information Practices Act of 1977.

LEGISLATIVE COUNSEL'S DIGEST

AB 1442, as introduced, Gatto. The Information Practices Act of 1977: local government.

The Information Practices Act of 1977 prescribes requirements on state agencies for the maintenance of personal information, as defined, and restricts a state agency from disclosing personal information contained in its records, as specified. The act requires each agency to maintain in its records only personal information that is relevant and necessary to accomplish a purpose of the agency required or authorized by the California Constitution or statute or mandated by the federal government. The act makes a person who willfully requests or obtains a record from an agency under false pretenses or who intentionally discloses specific information under certain circumstances guilty of a misdemeanor. The act provides that an intentional violation of its provisions by an officer or employee of an agency constitutes cause for discipline, including termination of employment. The act also provides a civil action against an agency for specified failures under the act. The act prohibits an individual's name and address from being distributed for commercial purposes, as specified, unless specifically authorized by law.

This bill would expand the definition of “agency” to include local governmental entities.

The bill would generally require an agency to destroy personal information maintained in accordance with the act when the agency determines the personal information is no longer relevant and necessary to accomplish its purpose. The bill would establish special provisions for a Kindergarten and grades 1 to 12, inclusive, school district regarding information destruction and parental notification for personal information on students maintained by the district.

By expanding the duties of local officials and expanding the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1798.3 of the Civil Code is amended to
- 2 read:
- 3 1798.3. As used in this chapter:
- 4 (a) The term “personal information” means any information
- 5 that is maintained by an agency that identifies or describes an
- 6 individual, including, but not limited to, his or her name, social
- 7 security number, physical description, home address, home
- 8 telephone number, education, financial matters, and medical or
- 9 employment history. It includes statements made by, or attributed
- 10 to, the individual.
- 11 (b) The term “agency” means every state *or local* office, officer,
- 12 department, division, bureau, board, commission, or other state *or*
- 13 *local* agency, except that the term agency shall not include:
- 14 (1) The California Legislature.

1 (2) Any agency established under Article VI of the California  
2 Constitution.

3 (3) The State Compensation Insurance Fund, except as to any  
4 records which contain personal information about the employees  
5 of the State Compensation Insurance Fund.

6 ~~(4) A local agency, as defined in subdivision (a) of Section 6252~~  
7 ~~of the Government Code.~~

8 (c) The term “disclose” means to disclose, release, transfer,  
9 disseminate, or otherwise communicate all or any part of any record  
10 orally, in writing, or by electronic or any other means to any person  
11 or entity.

12 (d) The term “individual” means a natural person.

13 (e) The term “maintain” includes maintain, acquire, use, or  
14 disclose.

15 (f) The term “person” means any natural person, corporation,  
16 partnership, limited liability company, firm, or association.

17 (g) The term “record” means any file or grouping of information  
18 about an individual that is maintained by an agency by reference  
19 to an identifying particular such as the individual’s name,  
20 photograph, finger or voice print, or a number or symbol assigned  
21 to the individual.

22 (h) The term “system of records” means one or more records,  
23 which pertain to one or more individuals, which is maintained by  
24 any agency, from which information is retrieved by the name of  
25 an individual or by some identifying number, symbol or other  
26 identifying particular assigned to the individual.

27 (i) The term “governmental entity,” except as used in Section  
28 1798.26, means any branch of the federal government or of the  
29 local government.

30 (j) The term “commercial purpose” means any purpose which  
31 has financial gain as a major objective. It does not include the  
32 gathering or dissemination of newsworthy facts by a publisher or  
33 broadcaster.

34 (k) The term “regulatory agency” means the Department of  
35 Business Oversight, the Department of Insurance, the Bureau of  
36 Real Estate, and agencies of the United States or of any other state  
37 responsible for regulating financial institutions.

38 SEC. 2. Section 1798.14 of the Civil Code is amended to read:

39 1798.14. (a) Each agency shall maintain in its records only  
40 personal information ~~which~~ *that* is relevant and necessary to

1 accomplish a purpose of the agency required or authorized by the  
2 California Constitution~~or~~, statute, *ordinance*, or mandated by the  
3 federal government, *and, except as provided in subdivision (b),*  
4 *shall destroy the personal information when the agency determines*  
5 *the personal information is no longer relevant and necessary to*  
6 *accomplish that purpose.*

7 (b) A school district for kindergarten or grades 1 to 12,  
8 inclusive, that gathers and maintains in its records personal  
9 information on a student enrolled in the school district in shall do  
10 the following:

11 (1) Destroy personal information maintained in its records  
12 within one year of a student turning 18 years of age, or within one  
13 year after the student is no longer enrolled in the school district,  
14 whichever is first.

15 (2) Notify each parent or guardian of the student that personal  
16 information is being gathered and that any information maintained  
17 in its records with regard to the student shall be destroyed in  
18 accordance with paragraph (1).

19 SEC. 3. Section 1798.17 of the Civil Code is amended to read:

20 1798.17. Each agency shall provide on or with any form used  
21 to collect personal information from individuals the notice specified  
22 in this section. When contact with the individual is of a regularly  
23 recurring nature, an initial notice followed by a periodic notice of  
24 not more than one-year intervals shall satisfy this requirement.  
25 This requirement is also satisfied by notification to individuals of  
26 the availability of the notice in annual tax-related pamphlets or  
27 booklets provided for them. The notice shall include all of the  
28 following:

29 (a) The name of the agency and the division within the agency  
30 that is requesting the information.

31 (b) The title, business address, and telephone number of the  
32 agency official who is responsible for the system of records and  
33 who shall, upon request, inform an individual regarding the location  
34 of his or her records and the categories of any persons who use  
35 the information in those records.

36 (c) The authority, whether granted by statute, regulation,~~or~~  
37 executive order~~which~~, *or ordinance that* authorizes the  
38 maintenance of the information.

39 (d) With respect to each item of information, whether submission  
40 of such information is mandatory or voluntary.

1 (e) The consequences, if any, of not providing all or any part  
2 of the requested information.

3 (f) The principal purpose or purposes within the agency for  
4 which the information is to be used.

5 (g) Any known or foreseeable disclosures ~~which~~ *that* may be  
6 made of the information pursuant to subdivision (e) or (f) of  
7 Section 1798.24.

8 (h) The individual's right of access to records containing  
9 personal information ~~which~~ *that* are maintained by the agency.

10 This section does not apply to any enforcement document issued  
11 by an employee of a law enforcement agency in the performance  
12 of his or her duties wherein the violator is provided an exact copy  
13 of the document, or to accident reports whereby the parties of  
14 interest may obtain a copy of the report pursuant to Section 20012  
15 of the Vehicle Code.

16 The notice required by this section does not apply to agency  
17 requirements for an individual to provide his or her name,  
18 identifying number, photograph, address, or similar identifying  
19 information, if this information is used only for the purpose of  
20 identification and communication with the individual by the  
21 agency, except that requirements for an individual's social security  
22 number shall conform with the provisions of the ~~Federal~~ *federal*  
23 Privacy Act of 1974 (Public Law 93-579).

24 SEC. 4. Section 1798.18 of the Civil Code is amended to read:

25 1798.18. (a) Each agency shall maintain all records, to the  
26 maximum extent possible, with accuracy, relevance, timeliness,  
27 and completeness.

28 ~~Such~~

29 (b) *That* standard need not be met except when ~~such~~ *those*  
30 records are used to make any determination about the individual.  
31 When an agency transfers a record outside of state *or local*  
32 government, it shall correct, update, withhold, or delete any portion  
33 of the record that it knows or has reason to believe is inaccurate  
34 or untimely.

35 SEC. 5. Section 1798.19 of the Civil Code is amended to read:

36 1798.19. Each agency, when it provides by contract for the  
37 operation or maintenance of records containing personal  
38 information to accomplish an agency function, shall cause,  
39 consistent with its authority, the requirements of this chapter to be  
40 applied to those records. For purposes of Article 10 (commencing

1 with Section 1798.55), any contractor and any employee of the  
2 contractor, if the contract is agreed to on or after July 1, 1978, shall  
3 be considered to be an employee of an agency. ~~Local government~~  
4 ~~functions mandated by the state are not deemed agency functions~~  
5 ~~within the meaning of this section.~~

6 SEC. 6. Section 1798.53 of the Civil Code is amended to read:

7 1798.53. (a) Any person, other than an employee of the state  
8 or of a local government agency acting solely in his or her official  
9 capacity, who intentionally discloses information, not otherwise  
10 public, which they know or should reasonably know was obtained  
11 from personal information maintained by ~~a state~~ *an* agency or from  
12 “records” within a “system of records” (as these terms are defined  
13 in the ~~Federal~~ *federal* Privacy Act of 1974 (~~P. L. 93-579; 5~~ (5  
14 U.S.C. Sec. 552a)) maintained by a federal government agency,  
15 shall be subject to a civil action, for invasion of privacy, by the  
16 individual to whom the information pertains.

17 ~~In~~

18 (b) *In* any successful action brought under this section, the  
19 complainant, in addition to any special or general damages  
20 awarded, shall be awarded a minimum of two thousand five  
21 hundred dollars (\$2,500) in exemplary damages as well as  
22 attorney’s fees and other litigation costs reasonably incurred in  
23 the suit.

24 ~~The~~

25 (c) *The* right, remedy, and cause of action set forth in this section  
26 shall be nonexclusive and is in addition to all other rights, remedies,  
27 and causes of action for invasion of privacy, inherent in Section  
28 1 of Article I of the California Constitution.

29 SEC. 7. No reimbursement is required by this act pursuant to  
30 Section 6 of Article XIII B of the California Constitution for certain  
31 costs that may be incurred by a local agency or school district  
32 because, in that regard, this act creates a new crime or infraction,  
33 eliminates a crime or infraction, or changes the penalty for a crime  
34 or infraction, within the meaning of Section 17556 of the  
35 Government Code, or changes the definition of a crime within the  
36 meaning of Section 6 of Article XIII B of the California  
37 Constitution.

38 However, if the Commission on State Mandates determines that  
39 this act contains other costs mandated by the state, reimbursement  
40 to local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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